

PAULA BRADY, LETA K. JIM, and	:	Order Docketing and Dismissing
PATRICIA G. STEVENS,	:	Appeal as Premature
Appellants	:	
	:	
v.	:	Docket No. IBIA 96-36-A
	:	
PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 29, 1996

On January 11, 1996, the Board of Indian Appeals received a notice of appeal from Paula Brady, Leta K. Jim, and Patricia G. Stevens, pro sese. Appellants stated that they were "formally registering a written request for a review of an action and the inaction of officials of the Bureau of Indian Affairs (BIA) regarding their participation and involvement in the internal affairs of the Te-Moak Tribe, which adversely affects [appellants] as Tribal Officials" (Notice of Appeal at 1).

Appellants did not specifically identify any decision issued by the Phoenix Area Director, BIA (Area Director), as the subject of their appeal. However, in light of certain documents attached to the notice of appeal, it appeared possible that appellants intended to appeal the Area Director's December 15, 1995, appointment of a Chief Magistrate for the CFR Court for the Te-Moak Tribe.

Because appellants' intent was not clear, the Board ordered them to show that their appeal was properly before the Board. The Board's order stated:

[Appellants] shall inform the Board whether they intended to appeal the Area Director's December 15, 1995, appointment of a Chief Magistrate for the CFR Court. If that was their intent, they shall also show that the appointment is a matter appealable under 25 CFR Part 2 and that appellants have standing to appeal the appointment. If appellants intended to appeal a decision of the Area Director other than his December 15, 1995, appointment of a Chief Magistrate, they shall furnish the Board with a copy of the decision. If appellants intended to appeal the inaction of the Area Director, they shall show that they have followed the procedures in 25 CFR 2.8. [Emphasis in original.]

Appellants' response offers limited clarification of their intent but does suggest that they are either seeking review of a decision or action of the Superintendent, Eastern Nevada Agency, BIA, or seeking to appeal from inaction of the Area Director.

On December 6, 1995, and again on December 20, 1995, appellants wrote to the Area Director, with the apparent intent of appealing a November 21, 1995, letter from the Superintendent concerning certain intra-tribal disputes within the Te-Moak Tribe. Appellants' letters also requested that the Area Director order the Superintendent not to interfere in internal tribal matters.

To the extent appellants are attempting to appeal the Superintendent's decision, or any action taken by him, directly to the Board, the Board would be required to dismiss the appeal for lack of jurisdiction. 43 CFR 4.331(a). Appellants clearly seem to realize, however, that the matter is presently pending before the Area Director. Thus, it seems most likely that appellants are simply impatient with the appeals process.

25 CFR 2.19 requires that Area Directors "render written decisions in all cases appealed to them within 60 days after all time for pleadings (including extensions granted) has expired." The term "all pleadings" includes answers of interested parties under 25 CFR 2.11. E.g., Cheyenne River Sioux Tribe v. Aberdeen Area Director, 23 IBIA 103 (1992). It is apparent that the Area Director's time to issue a decision in this case has not yet expired.

Appellants may be attempting to bypass the appeal process in 25 CFR Part 2 by describing their request to the Area Director as something beyond an ordinary appeal. Because their entire request to the Area Director involved the same general issue as that addressed in the Superintendent's November 21, 1995, letter, which they ostensibly appealed, it is not only appropriate, but essential to the orderly consideration of the matter, that the Area Director consider appellants' entire request together.

In any event, to the extent appellants are seeking to appeal inaction by the Area Director, they have not shown that they followed the procedures in 25 CFR 2.8. While they contend that they demonstrated good faith compliance with section 2.8, they concede that they failed to follow the procedures required therein. If appellants are suggesting that an approximation of compliance with section 2.8 is adequate, the Board rejects that suggestion. The procedures in section 2.8 are explicit, and exact compliance is required in order to ensure orderly processing of appeals.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed but is dismissed as premature.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge